From: LERS, EOIR (EOIR)
To: LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of CLAD (EOIR); All of OCIJ JLC (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
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EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
June 29, 2018

Federal Agencies

DOJ

- BIA Issues Decision in Matter of Negusie — EOIR

  27 I&N Dec. 347 (BIA 2018)

  (1) An applicant who is subject to being barred from establishing eligibility for asylum or withholding of removal based on the persecution of others may claim a duress defense, which is limited in nature. (2) To meet the minimum threshold requirements of the duress defense to the persecutor bar, an applicant must establish by a preponderance of the evidence that (1) he acted under an imminent threat of death or serious bodily injury to himself or others; (2) he reasonably believed that the threatened harm would be carried out unless he acted or refrained from acting; (3) he had no reasonable opportunity to escape or otherwise frustrate the threat; (4) he did not place himself in a situation in which he knew or reasonably should have known that he would likely be forced to act or refrain from acting; and (5) he knew or reasonably should have known that the harm he inflicted was not greater than the threatened harm to himself or others.

- BIA Issues Amicus Invitation No. 18-06-27 (Amended) — EOIR

  Issues Presented: (1) Is the Board required to give full faith and credit to a judgment issued under Cal. Penal Code § 1203.43 in light of the conviction definition found at section 101(a)(48)(A) of the Immigration and Nationality Act? Is the Board required to give full faith and credit to such a judgment if an alien has actually been informed of the immigration consequences of his or her plea pursuant to Cal. Penal Code § 1016.5 or otherwise? (2) To what extent is Cal. Penal Code § 1203.43 rehabilitative in nature? In answering, please include a discussion of Matter of Adamiak, 23 I&N Dec. 878 (BIA 2006), Matter of Pickering, 23 I&N Dec. 621 (BIA 2003), Matter of Rodriguez-Ruiz, 22 I&N Dec. 1378 (BIA 2000), Matter of Roldan, 22 I&N Dec. 512 (BIA 1999), and Matter of Punu, 22 I&N Dec. 224 (BIA 1998). Please also discuss to what extent relief under section 1203.43 is dependent on successful completion of a deferred adjudication program. (3) Does the legislative history of Cal. Penal Code § 1203.43 reflect that this statute was enacted for the purpose of providing courts with a mechanism to eliminate the immigration consequences of convictions? If so, is it preempted on the ground that it "stands as an obstacle to the

accomplishment and execution of the full purpose and objectives of Congress," Arizona v. United States, 567 U.S. 387, 399-400 (2012)? (4) Please discuss the prospective application of Cal. Penal Code § 1203.43. Will criminal defendants continue to be "misinformed" about the consequences of accepting a deferred adjudication plea?

- OCAHO Issues Decision in Ndzerre v. Wash. Metro. Area Transit Auth. — EOIR

  13 OCAHO no. 1306a (2018)

  The Administrative Law Judge granted the respondent's Motion for Summary Decision, dismissing the complaint in its entirety. The ALJ determined that the complaint failed to articulate that Ndzerre engaged in activity protected by 8 U.S.C. § 1324b, or that his alleged protected activity caused the purported retaliation. In addition, the ALJ determined that allegations of retaliation for activity regulated by Title VII of the Civil Rights Act of 1964 were not actionable before OCAHO.

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- DHS Extends Employment Authorization for Nepalese F-1 Nonimmigrant Students

  Effective June 28, 2018, DHS extended the suspension of certain regulatory requirements for Nepalese F-1 nonimmigrant students to avoid severe economic hardship that otherwise would result from the immediate, abrupt cessation of the temporarily suspended regulatory requirements governing on-campus and off-campus employment due to the April 2015 earthquake in Nepal.

- DHS Temporarily Extends Regulations to Allow for Border Barrier Replacement

  On June 27, 2018, DHS announced it "temporarily extended the applicability of certain regulations governing conduct on federal property to a certain area within the United States Border Patrol's El Centro Sector" because it is "replacing existing border fence with bollard wall near the city of Calexico . . . pursuant to several statutory and executive directives."

DOS

- DOS Releases 2018 Trafficking in Persons Report

  On June 28, 2018, DOS released the 2018 Trafficking in Persons Report, which the Secretary of State indicated "focuses on effective ways local communities can address human trafficking proactively and on how national governments can support and empower them."

HHS

- HHS Explains Family Reunification Process

  On June 23, 2018, HHS issued a press release explaining DHS's and HHS's "process established to ensure that family members know the location of their children and have regular communication after separation to ensure that those adults who are subject to removal are reunited with their children for the purposes of removal."

International

UN

- UN Secretary-General Releases Annual Report on Children and Armed Conflict

  On June 27, 2018, the UN Secretary-General released the Annual Report on Children and

Armed Conflict, which concludes that the "number of children affected by armed conflict and the severity of grave violations affecting them increased in the past year," as reported by the UN's Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

Supreme Court

OPINION

- Trump v. Hawaii

  No. 17-965, 2018 U.S. LEXIS 4026 (June 26, 2018)

  The Supreme Court determined that "[b]y its plain language, [8 U.S.C.] §1182(f) grants the President broad discretion to suspend the entry of aliens into the United States. The President lawfully exercised that discretion based on his findings—following a worldwide, multi-agency review—that entry of the covered aliens would be detrimental to the national interest." Further, the Court concluded that "the Government has set forth a sufficient national security justification to survive rational basis review. We express no view on the soundness of the policy. We simply hold today that plaintiffs have not demonstrated a likelihood of success on the merits of their constitutional claim."

CERT. GRANTED

- Johnson v. United States

  No. 17-7779, 2018 U.S. LEXIS 3947 (June 25, 2018)

  The Supreme Court vacated the judgment and remanded the case to the United States Court of Appeals for the Sixth Circuit for further consideration in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

- Rubio-Sorto v. United States

  No. 17-8109, 2018 U.S. LEXIS 3915 (June 25, 2018)

  The Supreme Court vacated the judgment and remanded the case to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

CERT. DENIED

- Vasquez v. Sessions

  No. 17-1304, 2018 U.S. LEXIS 3882 (June 25, 2018)

  Question Presented: Whether a conviction under a state criminal statute whose plain terms sweep in more conduct than a corresponding federal offense cannot be a categorical match with that federal offense.

- Khalil v. Sessions

  No. 17-8758, 2018 U.S. LEXIS 3935 (June 25, 2018)

  No questions presented are available at this time.

D.C. Circuit

- United States v. Haight

  No. 16-3123, 2018 WL 3077534 (D.C. Cir. June 22, 2018) (ACCA-COV)

  The D.C. Circuit concluded that the D.C. crime of assault with a dangerous weapon (D.C. Code § 22-402) qualifies as a "violent felony" under the ACCA, 18 U.S.C. § 924 (e)(1), which is analogous to a crime of violence under 18 U.S.C. § 16(a).

Second Circuit

- Villanueva v. United States

  No. 16-2528, 2018 WL 3077064 (2d Cir. June 22, 2018) (ACCA-COV)

  The Second Circuit concluded that Connecticut first degree assault is divisible and Conn. Gen. Stat. § 53a-59(a)(1) qualifies as a "violent felony" under the ACCA, 18 U.S.C. § 924 (e)(1), which is analogous to a crime of violence under 18 U.S.C. § 16(a).

- Mohamed v. Sessions

  No. 15-3996-AG, 2018 WL 3045427 (2d Cir. June 20, 2018) (unpublished) (Motion)

  The Second Circuit granted the PFR in part, concluding that the Board abused its discretion in denying the petitioner's motion to remand. The motion was based on an approved extension of time to file his state criminal appeal—proof of which was attached to the motion—rendering his late-filed appeal timely as of the date of the state court order. The Second Circuit determined that the Board "misstated [Second] Circuit law when it suggested that [Puello v. Bureau of Citizenship and Immigration Servs., 511 F.3d 324, 332 (2d Cir. 2007)] decided the finality question in [the Second] Circuit." The court added that it has "repeatedly acknowledged that Puello's statement regarding finality was merely dicta and that the question remains open." The court also denied the PFR in part, concluding that "there was no legal error in the determinations of the IJ or the BIA that Mohamed's conviction was for a particularly serious crime. Nor did the BIA err in affirming the IJ's determination that Mohamed was not eligible for CAT protection." The court remanded the case to the Board for an opportunity to render a decision on the merits of the motion to remand within the context of the correct legal framework.

Ninth Circuit

- Bermudez-Ariza v. Sessions

  No. 15-72572, 2018 WL 3097715 (9th Cir. June 25, 2018) (Board Jurisdiction)

  The Ninth Circuit granted the PFR, concluding that "[w]hether it is the government or the petitioner who has an interest in the IJ's jurisdiction on remand, the BIA must follow the procedure it outlined in [Matter of Patel, 16 I&N Dec. 600 (BIA 1978)]. Unless and until it overrules Patel, the BIA only retains jurisdiction when remanding to an IJ if its remand order expressly retains jurisdiction and qualifies or limits the scope of remand to a specific purpose."

- Bautista-Vasquez v. Sessions

  No. 16-72769, 2018 WL 3016930 (9th Cir. June 18, 2018) (unpublished) (Due Process; Continuance)

  The Ninth Circuit denied the PFR, concluding (without discussing the underlying facts or circumstances) that "[t]he agency did not abuse its discretion or violate due process in denying Bautista-Vasquez's request for a continuance where he did not demonstrate good cause."

- Palapa-Cabrerra v. Sessions

  No. 16-70050, 2018 WL 2996678 (9th Cir. June 15, 2018) (unpublished) (COR; Domestic Violence; Continuance)

  The Ninth Circuit denied the PFR, concluding that "[t]he agency correctly concluded that Palapa-Cabrerra was ineligible for cancellation of removal, where the record established that he had been convicted of domestic violence under California Penal Code § 273.5(a)." The court also determined that the agency "did not abuse its discretion in denying Palapa-Cabrerra's request for a continuance to determine whether to seek voluntary departure, where he was given four and a half months to prepare and file any and all applications for

relief."

Eleventh Circuit

- Villalobos v. U.S. Attorney Gen.

  No. 16-17536, 2018 WL 3025401 (11th Cir. June 18, 2018) (unpublished) (COV)

  The Eleventh Circuit granted the PFR in part, where during the pendency of the appeal, the United States Supreme Court held in Sessions v. Dimaya, 138 S. Ct. 1204 (2018), that the residual clause of the definition of crime of violence, 18 U.S.C. § 16(b), was void for vagueness. In light of Dimaya, the court vacated in part and remanded for the Board to consider whether the petitioner's conviction for aggravated child abuse in violation of Fla. Stat. § 827.03(2)(a) may qualify as a crime of violence under 18 U.S.C. § 16(a), and whether he may be eligible for asylum or cancellation of removal. The court also denied the PFR in part, concluding that the petitioner identified no evidence that the IJ and the Board failed to consider in denying his application for deferral of removal under CAT.